

1 The opinion in support of the decision being entered today was *not* written
2 for publication and is *not* binding precedent of the Board
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4 UNITED STATES PATENT AND TRADEMARK OFFICE
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7 BEFORE THE BOARD OF PATENT APPEALS
8 AND INTERFERENCES
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11 *Ex parte* REMY BADIN and LUCIEN FOSSE
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14 Appeal 2007-1665
15 Application 09/534,973
16 Technology Center 3700
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19 Decided: September 25, 2007
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22 *Before:* WILLIAM F. PATE, III, MURRIEL E. CRAWFORD, and
23 DAVID B. WALKER, *Administrative Patent Judges*.
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25 CRAWFORD, *Administrative Patent Judge*.
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28 DECISION ON APPEAL
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30 STATEMENT OF CASE

31 Appellants appeal under 35 U.S.C. § 134 (2002) from a final rejection
32 of claims 1-5 and 16-33. We have jurisdiction under 35 U.S.C. § 6(b)
33 (2002). The case came before us for hearing on September 13, 2007.

34 Appellants invented a hollow glass product which includes a collar
35 that extends beyond the cross section of the main body of the product
36 (Specification 1; claim 1; Figure 2).

Claim 1 under appeal reads as follows:

1. (Previously Presented) A glass product comprising:
a main container body having a closed bottom;
a secondary container body; and
a collar opened to an exterior of the product interposed between and
communicating with said main container body and the secondary
container body, said collar having an axis not parallel to an axis of
said main container body and an axis of said secondary container
body, the collar being integral with the main and secondary container
bodies, and the collar
extending beyond a cross section of the main body.

The Examiner rejected claims 1-5 and 16-33 under 35 U.S.C.
§ 103(a) (2004).

The prior art relied upon by the Examiner in rejecting the claims on
appeal is:

Paley	US 1,971,164	Aug. 21, 1934
Jennings	US 4,079,859	Mar. 21, 1978

Appellants contend that there is no reason to modify the teachings of
Paley in view of Jennings.

ISSUE

The issue is whether the Appellants have shown that the Examiner
erred in holding that the claimed subject matter would have been obvious in
view of the teachings of Paley in view of Jennings.

FINDINGS OF FACT

Paley discloses a container for use in a centrifuge for separating butter
fat from other substances in butter, cheese, cream, milk or like substances

(Page 1, ll. 16 to 19). As such, the container is shaped so as to fit in a centrifuging apparatus (Page 1, ll. 74 to 77). In particular, the collar is disclosed as being wholly within the cross section of this bottle so as to fit into a centrifuging apparatus (Page 1, ll. 93 to 98).

Jennings discloses a container for measuring liquids that includes a collar that extends beyond the cross section of the container body (Figure 3B). The container of Jennings is not configured to be placed in a centrifuging apparatus.

DISCUSSION

We will not sustain this rejection. The Paley container is configured to be placed in a centrifuging machine. In our view, a person of ordinary skill in the art would not modify the Paley container in view of the disclosure in Jennings because such modification would alter the container so that the container would not fit in a centrifuging apparatus. Therefore, the modification would render the Paley container unsuitable for its intended purpose. *See In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984).

Upon further prosecution of this application, the Examiner is urged to consider whether the claimed subject matter would have been obvious over variously shaped design and utility prior art references directed to perfume or other containers as many of the recited features of the claimed invention appear to be directed to decorative features with no specific utility or purpose and thus would have been a matter of design choice well within the skill of the ordinary artisan.

REVERSED

Appeal 2007-1665
Application 09/534,973

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